IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

BARRY L. FREEMAN,

Appellant,

v. Case No. 5D19-3407

STATE OF FLORIDA,

Appellee.

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Opinion filed July 17, 2020

Appeal from the Circuit Court
for Putnam County,
Patti A. Christensen, Judge.

James S. Purdy, Public Defender, and Edward J. Weiss, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney General, Daytona Beach, for Appellee.

ORFINGER, J.

Barry L. Freeman appeals the denial of his petition for discharge from involuntary commitment under the Civil Commitment of Sexually Violent Predators Act, commonly known as the "Jimmy Ryce Act," sections 394.910–.932, Florida Statutes (2019) ("the Act"). Freeman contends the State failed to prove by clear and convincing evidence that

his mental condition remained such that it was not safe for him to be released. We agree and reverse.

Following a jury trial in 2009, Freeman was found to be a sexually violent predator and involuntarily committed under the Act. We affirmed his commitment on appeal. Freeman v. State, 49 So. 3d 764 (Fla. 5th DCA 2010). As required under the Act, in 2019, Freeman received an annual review of his mental condition pursuant to section 394.918(1), Florida Statutes (2019). At the limited probable cause hearing, Freeman's expert testified that he was safe to be released and was not likely to engage in acts of sexual violence. The trial court found probable cause to warrant Freeman's release and set the case for trial in accordance with section 394.918(3), Florida Statutes (2019).

At the subsequent non-jury trial, the State's only witness was Dr. Sheila Rapa, who had evaluated Freeman several times during his commitment. Dr. Rapa discussed Freeman's course of treatment while committed and the various tests that had been administered to him. Ultimately, she opined that Freeman's mental condition had so changed that it was safe to release him and that he was not likely to engage in acts of sexual violence. Nonetheless, the trial court determined otherwise, concluding that Freeman's "condition [had] not changed to the extent that he is no longer a risk to commit a sexually violent offence if released," and continued Freeman's commitment.

When a person committed under the Act establishes probable cause to warrant release and receives a full trial, "the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence." § 394.918(4), Fla. Stat. (2019). We review the trial court's conclusion

that the State has met this burden for competent, substantial evidence. Abaunza v. State, 278 So. 3d 207, 210 (Fla. 1st DCA 2019).

Here, the State presented only one witness, its expert, Dr. Rapa, and admitted only her annual evaluation review, which both concluded that Freeman no longer met the criteria for involuntary civil commitment and recommended his release. A trial court cannot arbitrarily reject unrebutted expert testimony. Weiderhold v. Weiderhold, 696 So. 2d 923, 924 (Fla. 4th DCA 1997). If it does so, it must offer a reasonable explanation for doing so, such as impeachment of the witness or conflict with other evidence. Storey v. State, 139 So. 3d 448, 449 (Fla. 2d DCA 2014); see also Coday v. State, 946 So. 2d 988, 1005 (Fla. 2006) ("While we have given trial judges broad discretion in considering unrebutted expert testimony, we have always required that rejection to have a rational basis."). Moreover, "the trial court may not pit its judgment against that of an expert on highly technical matters." Fla. E. Coast Ry. v. Beaver St. Fisheries, Inc., 537 So. 2d 1065, 1069 (Fla. 1st DCA 1989). Instead, the court can only reject undisputed testimony from an expert when it either concerns technical evidence and "is so palpably incredible, illogical, and unreasonable as to be unworthy of belief or otherwise open to doubt[,]" or when it concerns non-expert matters and is disputed by lay testimony. Id. at 1070; see Beach Cmty. Bank v. First Brownsville Co., 85 So. 3d 1119, 1121 (Fla. 1st DCA 2012). That was not the case here.

Dr. Rapa's testimony was unchallenged. The two experts who testified both concluded that Freeman's mental condition had so changed that it is now safe for him to be released and that he was not likely to reoffend. Thus, the State failed to offer proof that Freeman would likely commit an act of sexual violence if released, and the trial court

erred in so concluding. Accordingly, we reverse the judgment under review and remand with directions to enter judgment in favor of Freeman.

REVERSED and REMANDED.

HARRIS, J., concurs.
EDWARDS, J., concurs, with opinion

EDWARDS, J., concurring.

It is clear that the experts' opinions were based upon inaccurate accounts provided by Appellant of the several violent sexual batteries he committed, rather than considering the victims' accounts which were obviously believed by the finders of fact who found him guilty of the underlying serial rapes. Thus, the trial court would have been justified in specifically rejecting that opinion testimony as incredible; however, it did not do so. Accordingly, I am compelled to concur in the majority opinion because the State did not carry its burden of proof and the trial court cannot order Appellant held because he might benefit from further treatment.